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6 UNITED STATES BANKRUPTCY COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8

9 In re: ) (Chapter 11 Cases)  
10 ) Case No. 98-3-3952  
11 LYON'S RESTAURANTS, INC., ) Case No. 98-3-3953  
12 a Delaware corporation, )  
13 Debtor. )

14 In re: ) (Jointly Administered for  
15 ) Procedural Purposes Only  
16 L.R. HOLDINGS, INC., ) Under Case No. 98-3-3952-TC  
17 a Delaware corporation, )  
18 Debtor. )

19 MEMORANDUM RE DEBTOR'S OBJECTION TO HARDEN RANCH CLAIM

20 Debtor Lyon's Restaurants, Inc. (Debtor) objected to the claim  
21 filed by Harden Ranch Plaza Associates Joint Venture (Harden Ranch)  
22 on the basis that the claim was not timely filed. The parties  
23 agreed to submit the matters on the papers without oral argument.  
24 Upon due consideration, and for the reasons stated below, I  
25 determine that the objection should be overruled.

26 **FACTS**

27 Debtor operated a chain of restaurants. Harden Ranch owned a  
28 building in Salinas, California in which the Debtor leased space.

1 At the time Debtor filed its chapter 11 petition, the lease had a  
2 remaining term of 13 years. Debtor sold all of its operating  
3 assets to ICH during the chapter 11 case. The purchase agreement  
4 permitted ICH to assume or reject individual restaurant leases.  
5 ICH rejected the Harden Ranch lease in December 1998. All lease  
6 payments were current at the time of the rejection. Upon  
7 rejection, Harden Ranch held an unsecured claim against Debtor for  
8 future rent, subject to a duty to mitigate damages, and subject to  
9 the limitations of 11 U.S.C. § 502(b)(6).

10 The court set January 18, 1999 as the deadline for filing  
11 proofs of claim. It is undisputed that Harden Ranch received  
12 notice of this deadline. Following ICH's rejection of the lease,  
13 Harden Ranch attempted to lease the premises to a restaurant called  
14 Chef Lee. These negotiations were still ongoing as of the claims  
15 bar date. Harden Ranch did not file a timely proof of claim. The  
16 negotiations with Chef Lee collapsed in May 1999, because Chef Lee  
17 was unable to obtain the financing necessary to open a new  
18 restaurant. Harden Ranch filed a proof of claim on June 17, 1999.  
19 Harden Ranch was unable to find any other tenant and sold the  
20 building in November 1999.

## 21 22 **DISCUSSION**

### 23 **A. THE CLAIMS BAR DATE DOES NOT APPLY TO REJECTION CLAIMS**

24 The only claims bar date fixed at the time Harden Ranch filed  
25 its proof of claim was the general claims bar date fixed in the  
26 Notice of Commencement of Case. That notice did not state that  
27 this deadline applied to claims arising from the rejection of  
28

1 executory contracts, nor did it fix a separate date for the filing  
2 of rejection claims.

3 Bankruptcy Rule 3003(c)(3), which governs the filing of claims  
4 in chapter 11 cases, provides:

5 Time for filing. The court shall fix and for cause  
6 shown may extend the time within which proofs of  
7 claim or interest may be filed. Notwithstanding the  
8 expiration of such time, a proof of claim may be filed  
9 to the extent and under the conditions stated in Rule  
10 3002(c)(2), (c)(3), and (c)(4).

11 Bankruptcy Rule 3002(c)(4) provides "[a] claim arising from the  
12 rejection of an executory contract or unexpired lease of the debtor  
13 may be filed within such time as the court may direct."

14 Read together, the two rules cited above provide that the  
15 court's fixing of a general claims bar date in a chapter 11 case  
16 does not by itself constitute the fixing of a bar date for  
17 rejection claims. To hold otherwise would render the second  
18 sentence of Rule 3003(c)(3) meaningless. If the court's fixing of  
19 a general bar date created a bar date for rejection claims under  
20 Rule 3002(c)(4), the exception in Rule 3003(c)(3) would never  
21 apply.

22 Because the court had not fixed a bar date for rejection  
23 claims, Harden Ranch's proof of claim was timely.

#### 24 **B. EXCUSABLE NEGLECT**

25 This court may allow a late-filed claim in a chapter 11 case  
26 if the late filing is the result of excusable neglect. Pioneer  
27 Investment Services v. Brunswick Associates, 113 S. Ct. 1489  
28 (1993). To the extent the claim bar date applies to Harden Ranch's  
rejection claim, I determine that Harden Ranch's failure to file

1 its proof of claim by that deadline is the result of excusable  
2 neglect. In so determining, I consider the following factors.

3       **1. Length of delay.** The claim was filed five months late.  
4 This delay is neither extensive nor de minimis, and does not weigh  
5 in favor of either party.

6       **2. Effect of delay on judicial proceedings.** Harden Ranch's  
7 delay in filing its proof of claim will have little effect on  
8 ongoing judicial proceedings. This is a liquidating chapter 11  
9 case. Confirmation of a plan was not delayed by Harden Ranch's  
10 delay in filing its proof of claim. Debtor has not asserted that  
11 this is the only remaining claim to be resolved. Finally, the  
12 Harden Ranch claim is easy to calculate and should not require any  
13 significant discovery or more than a short hearing to resolve.

14       **3. Reason for delay.** Harden Ranch did not file a timely  
15 proof of claim because it hoped it could fully mitigate its  
16 damages, and avoid having to file a claim, by leasing the premises  
17 to another tenant.<sup>1/</sup> The negotiations with Chef Lee did not, of  
18 course, prevent Harden Ranch from filing a protective proof of  
19 claim, and Harden Ranch's failure to file a protective claim  
20 constituted neglect. I find that this neglect was excusable,  
21 however, because the claim was not fully ripe and could not have  
22 been liquidated as of the claims bar date. As noted above, Harden

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24       <sup>1/</sup> Under governing California law, Harden Ranch might not  
25 have had any damage claim, even though it would clearly have lost  
26 rents between the date ICH rejected the lease and the starting  
27 date of the new lease with Chef Lee. If the rent under the new  
28 lease with Chef Lee were higher than the rent under the rejected  
lease with Debtor, Debtor would have been entitled to offset the  
increased future rents against Harden Ranch's other damages.  
See H. Miller & M. Starr, Current Law of California Real Estate,  
Vol. 6, § 18:135 at 402 (2d ed. 1989).

1 Ranch filed its proof of claim immediately after the Chef Lee  
2 negotiations fell through.

3       **4. Prejudice.** Debtor suffered no cognizable prejudice.  
4 First, Debtor's ability to establish the facts relevant to the  
5 claim was not diminished due to claimant's delay in filing its  
6 proof of claim. The claim is based on breach of a written lease.  
7 The only facts relevant to the validity and amount of the claim are  
8 whether Harden Ranch attempted to mitigate damages, and the extent  
9 of damages it suffered despite its efforts to mitigate. Because  
10 Harden Ranch was in the process of attempting to mitigate damages  
11 when the claims bar date passed, the events governing the amount of  
12 the claim had not occurred as of the bar date. Because Harden  
13 Ranch filed its proof of claim promptly after its efforts to  
14 mitigate failed, Debtor has not been prejudiced by lost evidence or  
15 fading memories regarding the controlling facts. Second, neither  
16 Debtor nor other claimants were misled in negotiating or litigating  
17 claims as a result of Harden Ranch's delay in filing its proof of  
18 claim. Harden Ranch's claim constitutes only about two percent of  
19 the general unsecured claims filed. Debtor does not assert that  
20 its claims objection strategy regarding other creditors would have  
21 been any different had it known of the Harden Ranch claim.

22       **5. Good faith.** Harden Ranch waited only until it completed  
23 its efforts to mitigate damages, which could have eliminated the  
24 claim in its entirety, to file its proof of claim. Such conduct  
25 has all the appearances of good faith, and Debtor does not contend  
26 to the contrary.

1 **CONCLUSION**

2 I do not determine the validity and amount of the Harden Ranch  
3 claim at this time. I determine only that the claim should not be  
4 disallowed as untimely. The court will hold a telephone status  
5 conference on June 19, 2000 at 11:00 a.m. The parties are  
6 instructed to meet and confer to attempt to resolve the claim  
7 or narrow the issues.

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17 Dated: \_\_\_\_\_ Thomas E. Carlson  
18 United States Bankruptcy Judge  
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